This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2021] EWHC 607 (Fam)

Case No: FD20P00617

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2021

Before :

MR JUSTICE PEEL

- -

Between :

LM	**Applicant**
- and -	
PT	**1st Respondent**
- and -	
DD **(through her Children's Guardian)**	**2nd Respondent**

- -
- -

The Applicant in person
The First Respondent in person
Jamie Niven-Phillips (Solicitor) for the Second Respondent

Hearing date: 10 March 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr Justice Peel :

Introduction

1. Although the parties have reached agreement, and presented a consent order, I consider it appropriate in this case to deliver a judgment, partly because jurisdictional issues arise and partly because I am of the clear view that it will assist the parties, and their daughter, to achieve a degree of closure in the expectation that there will be no further litigation between them. I have been the allocated judge throughout these proceedings and am very familiar with the case. I have not heard oral evidence, but I have read voluminous documentation and heard submissions from the parties. I am quite satisfied that I have sufficient overview of the facts to reach the conclusions set out in this judgment.

2. DD is now 16 years and 7 months old. By application dated 28 September 2020 her father ("F") seeks an order that her mother ("M") returns her to this jurisdiction from the USA, asserting that she was wrongfully removed there on 29 August 2020. Although the USA is a signatory to the Hague Convention 1980, Article 4 disapplies the application of the Convention to any child over the age of 16 at the time of removal. DD had just turned 16 as at 29 August 2020, and accordingly F was unable to seek a return order under the Convention.

3. Instead, his application is made on Standard form C66 as an application for wardship and return orders under the inherent jurisdiction. As has been said before, most notably in recent decisions of Mostyn J, he could, and probably should, have applied for a Specific Issue Order under s8 of the Children Act 1989 seeking the return of DD. The remedy is the same. A Children Act application would have enabled the case to be allocated to the appropriate level. Instead, the commonplace practice of applying via the wardship jurisdiction means that a case of this nature must be heard by a High Court Judge, or s9 authorised judge. Mostyn J put it as follows in **Re N [2020] EWFC 35**:

> "9. I have referred above to the need to establish exceptionality if the path chosen is an application to the High Court under its inherent powers. It is hard to conceive of circumstances where this would be justified. The matters referred to by Lord Wilson, namely urgency, complexity or judicial expertise can be fully accommodated by allocating the matter upwards within the Family Court, if necessary to High Court judge level. That is what has happened in this case.
>
> 10. Therefore, whether the application is for an inward return order or an outward return order it is almost invariably going to be framed as an application for a specific issue order pursuant to section 8 of the Children Act 1989. That is what has happened in this case. Such applications are the subject of clear procedural requirements under the Family Procedure Rules. The rules are there for a purpose. They are designed to ensure equal justice between the parties and to promote a reasonable and proportionate use of the court's resources."

4. His reference to the need to establish exceptionality is drawn from the Supreme Court decision in **Re NY [2019] UKSC 49** and in particular paragraph 44 of the judgment of Lord Wilson:

> "The application for the return order may be framed either as a claim for a specific issue order under section 8 of the Children Act 1989 or for an order pursuant to the inherent power of the High Court. However, the latter course should only be invoked exceptionally. Exceptionality may be demonstrated by reasons of urgency, complexity or the need for particular judicial expertise."

5. I acknowledge that F has acted throughout in person, and the interrelationship between the Children Act 1989 and the wardship/inherent jurisdiction continues to cause confusion among seasoned practitioners, let alone for litigants in person. I do not in any way criticise him for applying as he did, and simply note the practical consequences of applications for inward orders being routinely made under the inherent jurisdiction rather than under the Children Act 1989.

Representation

6. Both F and M appeared in person although M has been represented at earlier hearings. By order dated 1 December 2020 DD was joined to the proceedings and has an appointed Guardian and solicitor representative.

DD

7. There is a young adult at the heart of the proceedings, whose life, and all its potential, lies ahead. The Guardian describes her in this way: "Despite the toxicity of the adults' relationships, it is clear that DD has received good parenting as she has grown into a charming and intelligent young woman, and of this all the adults who have had responsibility for her care should be proud". I echo that sentiment.

The background

8. DD's parents were married on 22 February 2002 and separated in about 2009 or 2010. F is 56 and M 43. F has since remarried on 28 April 2018, and M also has a new partner. Protracted Children Act proceedings took place. In August 2013 primary care for DD was transferred from M to F on an interim basis. On 14 April 2014 DJ Robinson (as he then was) made a final order confirming residence in favour of F, and providing for contact between M and DD. Overnight contact was specified to take place on limited occasions and subject to supervision. The reasons for the restrictions on contact (particularly overnight contact) appear to have been rooted in concerns surrounding M's poor parenting which was at the time allegedly characterised by alcohol and drug misuse, prostitution, and neglect of DD. I do not need to investigate, let alone make findings on, these matters. The transfer of residence and requirement of supervised overnight contact speak for themselves.

9. Thereafter, DD lived with F. The relationship between the parents was negative and antagonistic and my impression is that it required time and effort on M's part to emerge from the low point to which she had fallen.

10. Coinciding with a gradual improvement in M's wellbeing, the relationship between the parents also improved. On 8 September 2019 they entered into a private written agreement whereby DD, by then aged 15, would spend more time with M, and her new partner, including on an unsupervised overnight basis. I assume that M had by then largely overcome her issues and/or in any event DD was better able to protect herself if necessary.

11. From late 2019 onwards M, who is a USA citizen, was considering relocating to the USA. She secured a job in the USA. In emails over the next 3 months, F expressed genuine pleasure for M that she had secured an excellent job in the USA and was planning to relocate. He reasonably indicated that he considered it would be far better for both parents to discuss the impact on DD jointly. And he reminded M, presciently anticipating the possibility of unilateral action by her, that there was in

place a binding court order and DD could not move from England without the sanction of the court.

12. In February 2020, M permanently relocated to the USA and started employment there. Between 9 and 31 July 2020 she returned to the UK for a holiday and to spend time with DD. I have no doubt that during 2019/2020 she discussed with DD the possibility of DD moving to the USA, encouraging her, and perhaps laying to one side the impact on her relationship with F. By the end of July 2020 DD was expressing to M (but not sharing with F) a willingness to move to the USA.

13. M arranged for a plane ticket to enable DD to fly to the USA. She secured, without F's knowledge, a USA passport for her. Although she says that she did so to enable DD to travel freely to and from the USA, I suspect she also had in mind facilitating a relocation.

14. On 29 August 2020 DD flew from Heathrow to the USA. M did not warn F in advance, or obtain his agreement. Nor did DD speak to F. Of course, they both knew that F, as had been made plain, would not agree. F learned of DD's departure when she rang from the plane just before take-off. Unhelpfully, when DD arrived in the USA, F was not initially told of her whereabouts.

15. Since then, DD has lived with M in California and is currently at college there. She has not seen F in person, although there has been some sporadic video contact.

16. F attempted to issue his application for wardship and an inward return order at the Central Family Court on 7 September. Eventually it was processed at the Royal Courts of Justice on 28 September 2020.

17. The obvious lack of trust between the parents in these proceedings has deep roots dating back to their separation and the circumstances leading to the child arrangements order of 2014. Each has acted unwisely:

    a. F contacted M's new employers by email on 31 August 2020, sharing with them accusations about M and material from the prior proceedings, which he simply should not have done. I appreciate that he was angry and frustrated at M's behaviour, did not know where DD was living and was concerned about DD's welfare, but lashing out in this way to her employers was not appropriate. To his credit, he accepts that he overreacted and has given an undertaking in this jurisdiction not to repeat such behaviour.
    b. M, as a result, applied for protective orders both in this jurisdiction and in the USA. The latter was, as M acknowledges, particularly antagonistic from F's perspective as it prevented him from coming into contact with DD. She, to her credit, is ensuring that provision is removed. I would encourage her to consider whether she truly requires protective orders in the USA given that F has given undertakings to like effect in this jurisdiction where, of course, he lives and is amenable to sanction in the event of breach. It would be far better from DD's point of view if these parents can finally put litigation behind them.

18. These events show why M should have gone about matters in a different way. Aiding DD in a clandestine departure from England to the USA was, in my view, damaging to the fragile nature of the family dynamics, and was unsettling for F who, it should be recalled, has been DD's primary carer for many years.

19. On F's side, he remains acutely concerned about whether M is still misusing drugs and alcohol. M in turn resents F's communications with her employers. She accepts that the manner in which she arranged for DD to go to the USA has caused hurt to F and his wife.

20. Plainly the magnetic feature in this case is the wishes of DD. She has made it abundantly clear that she wishes to remain in the USA living with her mother. I must be satisfied that her views are genuine, consistent, and not overborne by maternal influence. If I am so satisfied, it is self-evident that the wishes of a nearly 17-year-old are likely to be determinative absent powerful or compelling welfare interest to the contrary.

Progress towards settlement

21. In a statement of 16 December 2020, F indicated a willingness not to pursue his application, acknowledging as he did the clearly expressed wishes of DD to the Guardian and appreciating that court proceedings are injurious to her emotional wellbeing. In my view, it is a considerable credit to him that he took this step. Thereafter the parties engaged in discussions with a view to finalising an order; it is a shame that it has taken them over two months to be able to present a largely agreed order to me. I acknowledge in particular that an agreement under which DD continues to live in the United States is painful and difficult to bear for F who has been her primary carer for so many years, yet was kept entirely in the dark about DD's departure to the United States. Happily, it is agreed that DD should travel to see F from time to time which is manifestly in her best interests.

DD's wishes

22. The Guardian's reports set out in clear terms DD's views, wishes and feelings:
    a. DD is intelligent and articulate, presenting as older than her years. Her appraisal of people and circumstances is considered and nuanced.
    b. She is speaking for herself.
    c. She unreservedly wants to remain in the USA where she says she is happy both at home and at school. She wants to go to university there. After a holiday abroad at Christmas, on return to the USA she felt a really strong sense of being at home. She cannot imagine returning permanently to the UK.
    d. She would like to visit in the summer holidays to stay with F and her stepmother.
    e. Before going to the USA, she had researched schools and universities, but her wish to move did not crystallise until M's visit to the UK in July 2020. She concealed it from F because she knew he would be opposed.
    f. It took her a while to start feeling settled in the USA.
    g. She loves both F and her stepmother, although it is apparent that her relationship with F has suffered somewhat. She feels that F does not always listen to her.

23. The Guardian perceptively points out that DD has been at the centre of bitter disputes between her parents for years, and DD has had difficult relations with both of them. She says, and I agree, that the clandestine nature of the move was not in her interests and must have been deeply hurtful to F and his wife.

24. Nevertheless, DD is getting on for 17 and she says, and again I agree, that "The views of a young person of DD's age are usually considered to be determinative as she is essentially a young adult. The court would usually only make orders against the young person's wishes in exceptional circumstances".

25. She concludes that:
    a. DD should stay in the USA.
    b. She should spend time with F.

Habitual residence

26. The first issue before me is whether this court has jurisdiction to make orders in respect of DD. Article 8 of Council Regulation No 2201/2003 (applicable in this case by virtue of the application having been issued before 31 December 2020) provides that "The courts of a member state have jurisdiction in matters of parental responsibility over a child who is habitually resident in the Member State at the time the court is seised." Accordingly, I must be satisfied that as at 28 September 2020 (the date of issue of the application) DD was habitually resident in England.

27. The law on habitual residence was summarised in by Hayden J in **In re B (A Child) (Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam),** which has been referred to with approval by higher courts in **In the Matter of L (Children) [2017] EWCA Civ 441** and **In re C and another (Children) (International Centre for Family Law, Policy and Practice intervening) [2017] EWCA Civ 980, [2018] UKSC 8**. At paragraphs 16-18 he says this:

> "16. It is obvious from the chronology that B's habitual residence does not reveal itself instantly. Both counsel have, in their respective skeleton arguments, analysed the evolution of the Supreme Court case law extensively and with characteristic skill. In her document Ms Chokowry distils a number of propositions that she contends can be gleaned from the five Supreme Court judgments, addressing habitual residence, delivered since 2013: A v A (Children: Habitual Residence) (Reunite International Child Abduction Centre intervening) [2013] UKSC 60; [2014] AC 1 ; In re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening) [2013] UKSC 75; [2014] AC 1017 ; In re LC (Children) (Reunite International Child Abduction Centre intervening) [2014] UKSC 1; [2014] AC 1038 ; In re R (Children) (Reunite International Child Abduction Centre intervening) [2015] UKSC 35; [2016] AC 76 ; In re B (A Child) (Habitual Residence: Inherent Jurisdiction) [2016] UKSC 4; [2016] AC 606 .
>
> 17. I think that Ms Chokowry's approach is sensible and, adopt it here, with my own amendments:
>
> (i) The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (A v A, adopting the European test).
>
> (ii) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasised that the factual inquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (A v A, In re L).
>
> (iii) In common with the other rules of jurisdiction in Council Regulation (EC) No 2201/2003 ("Brussels IIA") its meaning is "shaped in the light of the best interests of the child, in particular on the criterion of proximity". Proximity in this context means "the practical connection between the child and the country concerned": A v A , para 80(ii); In re B , para 42, applying Mercredi v Chaffe (Case C-497/10PPU) EU:C:2010:829; [2012] Fam 22 , para 46.

(iv) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (In re R).
(v) A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (In re LC). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence which is in question and, it follows the child's integration which is under consideration.
(vi) Parental intention is relevant to the assessment, but not determinative (In re L, In re R and in re B).
(vii) It will be highly unusual for a child to have no habitual residence. Usually a child loses a pre-existing habitual residence at the same time as gaining a new one (In re B).
(viii) In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must weigh up the degree of connection which the child had with the state in which he resided before the move (In re B —see in particular the guidance at para 46).
(ix) It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (In re R and earlier in in re L and Mercredi).
(x) The relevant question is whether a child has achieved some degree of integration in social and family environment; it is not necessary for a child to be fully integrated before becoming habitually resident (In re R) (emphasis added).
(xi) The requisite degree of integration can, in certain circumstances, develop quite quickly (article 9 of Brussels IIA envisages within three months). It is possible to acquire a new habitual residence in a single day (A v A; In re B). In the latter case Lord Wilson JSC referred (para 45) to those "first roots" which represent the requisite degree of integration and which a child will "probably" put down "quite quickly" following a move.
(xii) Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (In re R).
(xiii) The structure of Brussels IIA, and particularly recital (12) to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former" (In re B supra).

18. If there is one clear message emerging both from the European case law and from the Supreme Court, it is that the child is at the centre of the exercise when evaluating his or her habitual residence. This will involve a real and detailed consideration of (inter alia): the child's day to day life and experiences; family environment; interests and hobbies; friends etc and an appreciation of which adults are most important to the child. The approach must always be child driven…"

28. It is convenient to note that in **Re M [2020] EWCA Civ 1105** at para 63 Moylan LJ cited Hayden J's summary, commenting that he considered subparagraph (viii) (set out above) should be omitted as it "might distract the court from the essential task of analysing "the situation of the child" at the date relevant for the purposes of establishing jurisdiction".

29. **In Re B [2020] EWCA Civ 1187** (in which habitual residence was found to have changed in just 18 days) Moylan LJ stated as follows:

'I also propose to repeat my conclusions from M (Children), in particular in respect of Lord Wilson's see-saw analogy:

"[61] In conclusion on this issue, while Lord Wilson's see-saw analogy can assist the court when deciding the question of habitual residence, it does not replace the core guidance given in A v A and other cases to the approach which should be taken to the determination of the habitual residence. This

requires an analysis of the child's situation in and connections with the state or states in which he or she is said to be habitually resident for the purpose of determining in which state he or she has the requisite degree of integration to mean that their residence there is habitual.

[62] Further, the analogy needs to be used with caution because if it is applied as though it is the test for habitual residence it can, as in my view is demonstrated by the present case, result in the court's focus being disproportionately on the extent of a child's continuing roots or connections with and/or on an historical analysis of their previous roots or connections rather than focusing, as is required, on the child's current situation (at the relevant date). This is not to say continuing or historical connections are not relevant but they are part of, not the primary focus of, the court's analysis when deciding the critical question which is where is the child habitually resident'.

30. In **SS v MCP [2020] EWHC 2971 (Fam)** Mostyn J summarised the jurisprudence as follows:

"23. There have been at least three decisions of the Court of Justice and five from the Supreme Court about the extremely simple concept of habitual residence. At the end of the day all the learning always comes back to paragraph 56 of the decision of the Court of Justice in *Mercredi v Chaffe* [2012] Fam 22, where it is stated:

> "The concept of habitual residence … must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State -- other than that of her habitual residence -- to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State, and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child taking account of all the circumstances of facts specific to each individual case."

24. I make the following observations:

i) The exercise is factual from first to last.

ii) The intentions of the actors are facts, just like any other facts. They are not determinative. Habitual residence can be established notwithstanding the mental opposition of the actors or some of them. There are many situations where circumstances will dictate habitual residence contrary to the wishes and intentions of the person in question. I note the reference to Napoleon Bonaparte and Robinson Crusoe by the full court of the Family Court of Australia in the abduction case of *Zotkiewicz v Commissioner of Police No. 2* [2011] Fam CA FC, 147 at [117].

iii) Habitual residence must be distinguished from mere temporary presence (see *Mercredi v Chaffe* at [51]). In the explanatory report to the 1996 Hague Convention at paragraph 40 Mr. Lagarde states:

"Thus … the temporary absence of all the child from the place of his or her habitual residence for reasons of vacation, of school attendance or of the exercise of access rights, for example, did not modify in principle the child's habitual residence."

However, there is no requirement of permanent residence, as Lord Reed explained in *AR v RN (Scotland)* [2016] AC 76 at [16] where he said:

"It is therefore the stability of the residence that is important, not whether it is of a permanent character. There is no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely."

31. On the evidence, I conclude that DD had not, by 28 September 2020, acquired habitual residence in the USA. Her habitual residence at that point remained with this jurisdiction. She was subject to a child arrangements order committing her to the care of F, and had been living with him in this country as her primary carer for many years. Her legal status, place of residence, school, family life, friends and all her major links were with the UK before her departure to the USA. She had far weaker links with the USA, was not familiar with it and was not permitted to move there absent an English court order. In my judgment, the more deep-rooted the integration in one jurisdiction, the harder it will be to acquire the necessary degree of integration in another jurisdiction. She, and M, both knew that F opposed a move to the United States and expected such a move only to take place if sanctioned by the English court. The move itself was conducted by subterfuge. In my judgment, DD, upon her move, cannot have assumed definitively that it would be permanent, given her lack of familiarity with the USA and her knowledge of F's resistance. As matters have transpired, she has become settled and happy, but I conclude that the necessary degree of integration had not occurred by 28 September 2020, a matter of only 1 month after her departure.

Inward return order

32. Having satisfied myself that I have jurisdiction to make orders by Article 8, I go on to consider whether in the exercise of my discretion I should in fact make an inward return order. In so doing I adopt the summary of the law as set out by Mostyn J in **Re N [2020] EWFC 35**:

"1. Routinely the court is asked to exercise its powers to order the return of a child to another place under the 1980 Hague Convention (as incorporated by the Child Abduction and Custody Act 1985). But the court is sometimes asked to make a summary return order either pursuant to the Children Act 1989 or under its inherent powers. There are two kinds of return order. There is the outward return order where the court orders the child to be returned to another place. This kind of order was the subject of recent consideration by the Supreme Court in **Re NY (A Child) [2019] UKSC 49**. Then there is the inward return order where the court orders a child to be returned from another place to England and Wales.

2. In this case the father applies for an inward return order.

3. There are no reasons why different principles should apply to the two kinds of order. They are subject to the same substantive law, and to the same procedural law.

4. In *Re NY (A Child)* Lord Wilson stipulated the following principles for an outward return order:

i) The application for the return order may be framed either as a claim for a specific issue order under section 8 of the Children Act 1989 or for an order pursuant to the inherent power of the High Court. However, the latter course should only be invoked exceptionally. Exceptionality may be demonstrated by reasons of urgency, complexity or the need for particular judicial expertise: [44].

ii) Notwithstanding that the application is for a summary return order, the court must nonetheless conduct a proper welfare enquiry pursuant to section 1 of the Children Act 1989. The evidence must be sufficiently complete and up-to-date to justify the making of a return order. In the welfare enquiry the child's interests will be the paramount consideration. The court must specifically consider all the matters mentioned in section 1(3), the first of which, of course, is the ascertainable wishes and feelings of the child concerned: [51 -53], [56], [57], [58].

iii) The respondent must be given sufficient notice of the application to seek a return order: [54].

iv) Where there are contested allegations of domestic abuse the court must specifically consider whether any enquiries should be conducted into them and, if so, how extensive that enquiry should be: [59].

v) The court must be satisfied by evidence as to the living arrangements for the child if a return order were to be made: [60].

vi) The court must specifically consider whether the parties should give oral evidence at the hearing and if so on what aspects and to what extent: [61].

vii) The court must consider whether a Cafcass officer should be directed to prepare a report, and if so, what aspects and what extent. It will be important in this way to establish the child's wishes and feelings: [62].

viii) The court will need to consider the ability of the court in the other place to reach a swift resolution of the issues between the parents in relation to the child: [63].

33. The exercise (whether it be an application for a Specific Issue Order under s8 of the Children Act 1989 or an application for a return order under the inherent jurisdiction) is guided by the principle that the welfare of the child is the court's paramount consideration, and informed by the welfare checklist in the Children Act 1989, one of which at s1(3)(a) is "the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding"). Significantly, s9(6) of the Act states that: "No court shall make a section 8 order which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional".

34. Here the child is not far off 17 years of age. In **AS v CPW [2020] EWHC 1238** Mostyn J was faced with an application for an inward return order from Sierra Leone to this jurisdiction of 3 children, the oldest of whom was 14 ½. In respect of the older child's expressed objections to returning to England he said this:

"15. The applications before me will be judged by reference to the paramountcy of the child's welfare principle set out in section 1(1) of the Children Act 1989. In applying that principle, I must have regard to the matters set out in section 1(3). Of these the first mentioned is the wishes and feelings of B.

16. It was said to me by Ms Chaudhry, and also by Ms Magson, that at age 14½ B is of an age where his wishes "are entitled to be taken into account". I do not think that properly reflects the amount of weight that the court should place on not unreasonable wishes expressed by a child of this age.

17. It is noteworthy that in other spheres of family law, and indeed the general law, the decision of a child of 14½ will be decisive of the matter in question.

23. Neither my researches nor the researches of counsel have identified a case where the wish of a Gillick-competent child opposing an inward return order sought in inherent jurisdiction proceedings has been overridden. One case has been found where an outward return order pursuant to the inherent jurisdiction was made in respect of an opposing Gillick-competent child. That was *MR v JN (Re: Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return))* [2019] EWHC 490 where Williams J ordered the return to Poland of a 12-year-old child (V) pursuant to the 1980 Hague Convention and a 17-year-old child (Q) pursuant to the inherent jurisdiction. Both children objected to the return. Williams J set out his reasons for making the order in respect of the 17-year-old at [83]:

> "I have thought very long and hard about whether an order for return is in Q's best interests. I have concluded that it is in his best interest's overall to return but that still begs the question of whether an order is appropriate or not given his age. I have thought more than twice about what the right outcome and order should be in respect of Q. I have considered whether given his age I should decline the application for the order for return but rather to operate on the belief that he will return with V in any event as I believe that he wishes to remain with her and a large part of him wishes to return to Poland anyway. If I leave the choice to him I feel reasonably sure that he will come under significant pressure from his mother and her partner to remain and I do not consider that to be in his best interest. I conclude that there may be some merit in Miss Papazian's point that although he describes his contact with his father as being undertaken in order to comply with the court order that may in fact be a mask for an underlying and genuine desire to have a relationship with his father. I have also obviously considered whether in making an order for return it will set up struggle between the court system seeking to enforce the return and Q resisting. From all I have read and heard about Q I do not conclude that this is a likely outcome. I conclude that it is more likely that Q will cooperate in the process of return. In respect of Q I'm also satisfied that an order for his return should be made pursuant to the inherent jurisdiction. Notwithstanding he is 17 and has expressed a desire to remain in the UK and not to return to Poland, I'm satisfied on a summary assessment of his welfare that a return is in his best interests notwithstanding his age and his expressed views. The summary welfare assessment comprises many elements and save in respect of his expressed views they point to his welfare being promoted by a return to Poland and the resumption of a full life there. I am fully alive to the unusual nature of making a return order in respect of a 17-year-old who says he does not wish to return. However I am particularly alive to the issue of the impact that the chronic parental conflict is having on the ability of Q and V to truly understand their own positions and to be able to express views which are not tainted by the backdrop to their lives that the conflict has given. I consider that making an order in respect of Q may in fact free him from responsibility which would otherwise be placed on him to seek to remain in England in support of the mother's ongoing campaign to remedy what occurred in Poland in 2014."

> I have to say that I am surprised by this decision, but it may be rationalised as being reflective of perceived equivocation on the part of Q as well as a concern that his expressed wish may well have been the product of coercion. Further, given that the 12-year-old was going anyway the decision of Q can easily be categorised as objectively unreasonable. I very much doubt that Williams J would have reached the same decision had he been concerned with the 17-year-old alone.

> 24. Two cases ordering the return of older children under the Hague Convention 1980 have been identified namely *AVH v SI & Anr (Abduction: Child's Objection)* [2015] 2 FLR 269 where a 14-year-old girl was ordered to be returned to Mexico notwithstanding her objections and *Y & Z (Children : Hague Convention)* [2017] EWFC 102 where the court ordered the return of 15- and 11-year-old siblings despite finding that they objected. However, each decision was made under a legal regime which does not make the child's interests the paramount consideration, and where the question of the child's objections is given its own separate and distinct treatment."

35. It seems to me that in principle, the wishes of a child of 16 years and 8 months should ordinarily be respected. Indeed, they should ordinarily be determinative of an application such as this, absent a powerful justification pointing the other way. One can envisage a situation where the child's wishes are not truly their own, suborned to the undue influence of one or other parent, or a third party. Or perhaps objectively the wishes of the child are so irrational that they demand being overridden by the court. Or perhaps it is clear that acceding to a child's wishes will expose him/her to a situation of real danger. But absent such an exceptional situation, it is hard to see how a court can do other than follow the wishes of a mature, clear thinking and rational child of this age.

36. In this case I am quite sure that M encouraged DD over a period of time measured in months to undertake a move. To that extent, DD was of course influenced by M. All children receive the influences of the major adult figures in their lives. But it does not mean that the decision to move and, perhaps more importantly for my purposes, the decision to remain in the USA, is not her own. Her will has not been suborned to M; she was not unduly influenced by M. She is expressing her own views authentically and consistently, and in a nuanced, mature and articulate way. She bases them in large measure on her own lived experiences in the USA over the past 6 months. She is facing her future in a clear-eyed way, acknowledging that she would return to the UK if things in the USA do not work out. She is aware of her mother's shortcomings and past issues, but is confident that, at her age, she can deal with them if the need arises. She has, quite simply, decided that her future lies in the USA.

37. It seems to me that were I to make a return order, M and DD would immediately apply to the Family Court for a relocation order, and such an application would be almost impossible for F to resist. A return order from the USA would be an exercise in futility.

38. I also take the view that to require DD to return against her will would be likely to cause a deterioration in her relationship with F at a time when it needs repair and renewal.

39. I sympathise with F's profound concern about the way in which DD left this country. Equally, I commend him for his realistic acceptance that it would be counter-productive and wrong to seek to go against DD's wishes. Whilst he has a heavy heart, it is a reflection of his abiding desire to act in DD's best interests that he now no longer pursues his application. He has put his own needs above hers.

40. Finally, I urge both parents to reflect on how best, for DD's sake, to ensure that she can grow up enjoying the company of each of them, and knowing that she has their undoubted love and support. They have a daughter of whom they can be immensely proud, and she will continue to need their support.

Order

41. I will therefore grant the order now sought.